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STATE OF ARIZONA
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S. LANDINO

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

STATE OF ARIZONA, COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

Cause no. V1300CR201080049

Division PTB

STATE'S MOTION IN LIMINE
RE: EXPERT RICK ROSS

(Oral Argument Requested)

The State of Arizona, by and through undersigned counsel, moves *in limine* to preclude the defendant from introducing irrelevant and unduly prejudicial evidence pertaining to the State's expert witness, Rick Ross. For the reasons set out in the following Memorandum of Points and Authorities, the Court should preclude any such evidence.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS:

The State retained Rick Ross as an expert witness to educate the jury about the topic of Large Group Awareness Training (LGAT). LGAT is a powerful persuasive technique that can be used to cause persons to behave differently than common sense or wisdom would dictate. The State will offer evidence that defendant utilized many of the principals of LGAT to keep the victims from leaving the sweat lodge.

1 Mr. Ross has previously testified as an expert in the courts of ten (10) states, as well as
2 qualifying in 2008 as an expert in religious cults and coercive persuasion following a *Daubert*
3 hearing in a federal trial court in California. Mr. Ross has published articles on cults and
4 coercive persuasion, has lectured at numerous universities, and been cited or interviewed as an
5 expert on numerous local, national, and international news outlets.

6
7 Mr. Ross also has a prior felony conviction from 1976 for Conspiracy in the Second
8 Degree to Commit Grand Theft, in Maricopa Superior Court cause no. CR89445. In 1983, the
9 Maricopa Superior Court granted an application filed by Mr. Ross to vacate the judgment of guilt
10 and dismiss the charges.

11 In the 1980s through 1990, Mr. Ross was involved in a few incidents where he assisted in
12 forcibly detaining and "deprogramming" adult cult members. One of these incidents occurred in
13 1990, when Mr. Ross assisted a mother in forcibly detaining and deprogramming her 18 year old
14 son. Mr. Ross was charged with felonies pertaining to the 1990 incident, and acquitted. He was
15 also sued by the Church of Scientology over the 1990 incident and ordered to pay damages.
16
17 **Mr. Ross has not engaged in any activities involving the forcible detention and**
18 **deprogramming of adult cult members since 1990**, although he still occasionally does so with
19 juvenile cult members upon the request of the juvenile's parent or Child Protective Services. Mr.
20 Ross will not be called in the above-captioned case to testify about cult deprogramming methods.

21
22 **II. LAW AND ARGUMENT:**

23 The State moves the court *in limine* to prevent the defendant from attempting to introduce
24 evidence of Mr. Ross' thirty five year old felony conviction, or of Mr. Ross's practices regarding
25 cult deprogramming.

26 "Evidence which is not relevant is not admissible." Ariz.R.Evid. Rule 402. Relevant
evidence means "evidence having any tendency to make the existence of any fact that is of

1 consequence to the determination of the action more probable or less probable than it would be
2 without the evidence.” Ariz.R.Evid. Rule 401.

3 Relevant evidence may be excluded if its probative value is substantially outweighed by
4 the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations
5 of undue delay, or waste of time. Ariz.R.Evid. Rule 403. Unfair prejudice results if evidence has
6 undue tendency to suggest a decision on an improper basis, such as emotion, sympathy, or horror.
7
8 *State v. Mott*, 187 Ariz. 536, 931 P.2d 1046 (1997) *cert. denied* 117 S.Ct. 1832, 520 U.S. 1234.

9 Evidence of a felony conviction that is over ten years old is generally not admissible,
10 unless the court determines that the interests of justice require its admission and the probative
11 value of the conviction, as supported by specific facts and circumstances, substantially outweighs
12 the conviction’s prejudicial effect. Ariz.R.Evid. Rule 609(b). Additionally, evidence of a
13 conviction over ten years old is not admissible unless the proponent provides the opposing party
14 with sufficient advance written notice of its intention to use the evidence. *Id.*

16 A. Evidence of Mr. Ross’ 1976 Felony Conviction Should be Precluded.

17 Mr. Ross’ 1976 felony conviction is almost thirty five years old. Since the time of the
18 conviction, Mr. Ross turned his life around, had the conviction dismissed, and has become an
19 internationally renown expert who has published scholarly articles, testified in numerous courts as
20 an expert, and lectured at numerous universities. Simply put, the extraordinary rehabilitation
21 demonstrated by Mr. Ross indicates there is no probative value whatsoever to the thirty-five year
22 old felony conviction. The thirty five year old conviction has no tendency of making any fact at
23 issue in this case any more or less probable. Rule 401. Any residual probative value would be
24 strongly outweighed by the prejudice that would entail if the jury were to learn of the conviction.
25
26 Rule 403.

1 Moreover, notwithstanding the fact the defendant has known about the felony conviction
2 since October 2010, and the fact the trial is only weeks away, the defense has not provided any
3 notice of intent to use the felony conviction, as required by Rule 609(b). Insufficient time exists
4 for the State to meaningfully respond to any such notice, should it be given at this late date.

5 Accordingly, the State respectfully requests the court preclude defendant from introducing
6 any evidence, or questioning Mr. Ross, about the thirty five year old felony conviction.
7

8 *B. Evidence of Mr. Ross' Cult-Deprogramming Practices Should be Precluded*

9 In addition to his expertise on Large Group Awareness Training, Mr. Ross is also an
10 expert on cults and on cult deprogramming. **The State does not intend to call Mr. Ross as an**
11 **expert on cult deprogramming.** Accordingly, Mr. Ross' cult deprogramming practices in the
12 1980s and 1990, are not relevant to any fact that is of consequence to the determination of the
13 action, and should be precluded. Ariz.R.Evid. Rule 402.
14

15 Clearly, the issues surrounding a mother's decision twenty years ago to have her then
16 eighteen year old son forcibly detained in order to save him from what the mother believed to be
17 a harmful and dangerous lifestyle, is likely to cause the very types of unfair prejudice, confusion
18 of the issues, and emotions, that Rule 403 was designed to safeguard against.. *See e.g. State v.*
19 *Mott*, 187 Ariz. 536, 931 P.2d 1046 (1997) *cert. denied* 117 S.Ct. 1832, 520 U.S. 1234.
20

21 Moreover, given the fact that over twenty years have passed since Mr. Ross last assisted
22 in the forcible deprogramming of an adult cult member, any relevancy that these very old past
23 acts may have is so remote and speculative that the prejudicial effect of admitting such evidence
24 far outweighs any probative value it may have, and such evidence should be precluded.
25 Ariz.R.Evid. Rule 403.

26 As noted above, Mr. Ross was prosecuted for the 1990 incident and acquitted. Should the
defense be allowed to query Mr. Ross about his involvement in the 1990 incident, many of the

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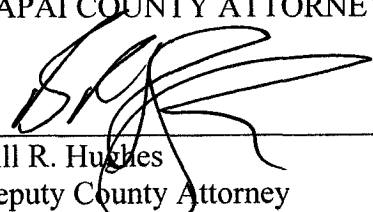
1 facts and issues that were at issue in the 1990 prosecution will again need to be relitigated, in
2 order to give the jury a complete and accurate account of what happened. This will lead to what
3 would amount to a "mini trial" on a collateral issue. As such, it should be precluded. *State v.*
4 *Williams*, 111 Ariz. 511, 533 P.2d 1146 (1975) (Holding that impeachment on collateral issues is
5 not allowed); *and* Rule 403 (Precluding evidence when its probative value is substantially
6 outweighed by the danger of confusing issues, misleading the jury, or by considerations of undue
7 delay and waste of time).

9 **III. CONCLUSION:**

10 Evidence of Mr. Ross' thirty five year old felony conviction is not relevant, and is
11 outweighed by its prejudicial effect. Likewise, in a case where Mr. Ross will be called as an
12 expert solely on the topic of LGAT, evidence of Mr. Ross's unrelated cult deprogramming
13 practices from twenty or more years ago, is also not relevant, and would be severely prejudicial to
14 the State. Evidence of specific instances from twenty or more years ago in Mr. Ross' past would
15 also require the jury to hear and determine collateral issues. Accordingly, the Court should
16 preclude defendant from attempting to introduce evidence of Mr. Ross' felony conviction, or of
17 Mr. Ross's practices regarding cult deprogramming.

19 Dated this 24th day of January, 2011.

21 Sheila Sullivan Polk
YAVAPAI COUNTY ATTORNEY

22
23 By: 
24 Bill R. Hughes
25 Deputy County Attorney
26

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COPIES of the foregoing emailed/delivered this
24th day of January, 2011:

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